

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION  
OPIATE LITIGATION

MDL No. 2804

*This document relates to:*

Case No. 17-MD-2804

ALL CASES

Judge Dan Aaron Polster

**CERTAIN MANUFACTURER DEFENDANTS' RESPONSE TO THE COURT'S  
ORDER REGARDING PROFESSOR RUBENSTEIN'S REPORT AND  
RECOMMENDATION AND JOINDER IN RESPONSES BY OTHER DEFENDANTS**

Certain of the Manufacturer Defendants<sup>1</sup> respectfully submit this response to the Court's Order (Dkt. No. 3320) directing the Plaintiffs Executive Committee ("PEC") and interested parties to address the questions in Professor William B. Rubenstein's Report and Recommendation (Dkt. No. 3302) regarding the PEC's motion for a Common Benefit Fund (ECF Nos. 3319, 3212-1).

Because other defendants and parties are submitting responses to the questions posed by Professor Rubenstein, these Manufacturer Defendants will not repeat what has been said elsewhere. This response is filed to make the following specific points.

*First*, although the Report and Recommendation does not address the jurisdictional and other legal barriers to granting the PEC's motion, those barriers remain. As explained in prior filings by these Manufacturer Defendants and others parties, the proposed order is improper and a Common Benefit Fund should not be implemented at this time. *See* Dkt. Nos. 3186, 3228. In ruling on the PEC's motion, the Court should consider not only the responses to the specific

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<sup>1</sup> This Response is filed on behalf of Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc.; Allergan Finance, LLC f/k/a/ Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Mallinckrodt LLC, SpecGx LLC, and Mallinckrodt plc. Mallinckrodt plc is an Irish company and is not subject to and contests personal jurisdiction; it is specially appearing here and, thus, does not waive and expressly preserves its personal jurisdiction challenge.

questions raised by Professor Rubenstein, but also the broader (and threshold) issues and arguments presented by the earlier briefing opposing the PEC's motion.

*Second*, with respect to the questions posed by Professor Rubenstein, these Manufacturer Defendants join in the responses submitted by the Distributor Defendants, Janssen, and Teva. In particular, with respect to the timing of the implementation of any Common Benefit fund, these Manufacturer Defendants agree that imposition of a fund and the proposed holdbacks would be an intrusive step into potential settlement negotiations and should be avoided at this stage. Imposing an upfront assessment (particularly an assessment of 7%) on potential recoveries could affect parties' willingness to participate in settlement negotiations.

Accordingly, for the reasons stated in the prior briefing (*e.g.*, Dkt. Nos. 3186, 3228) and in response to Professor Rubenstein's questions, the Court should deny the PEC's motion to create a Common Benefit Fund.

Dated: June 24, 2020

Respectfully submitted,

/s/ Jonathan L. Stern

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record on June 16, 2020.

/s/ Jonathan L. Stern

Jonathan L. Stern